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January 14, 2011

Surface Transportation Board
Attn: Docket No. Ex Parte No. 704
395 E Street, SW
Washington, DC 20423-0001

228663

RE: Docket Number Ex Parte No. 704, Review of Commodity, Boxcar, and TOFC/COFC Exemptions

To Whom It May Concern:

These Comments are submitted on behalf of the Washington State potato industry and its member companies. We commend the Board for instituting this proceeding to consider revoking class-wide exemptions. These Comments concern the class-wide exemption for potatoes, which was adopted in the 1980s.

The Washington State potato industry produced approximately 20 percent or 8.1 billion pounds of the total US potato crop this year. Approximately 21 percent, or 1.7 billion pounds, of this production will be packed specifically as fresh potatoes and sold in the United States and abroad. Potatoes are a perishable commodity, and therefore our members can only utilize refrigerated boxcars, containers, and trucks to move their product to market. Potatoes, of course, are a widely used product in a variety of foods. There is a strong market for Washington potatoes.

Our main growing region for fresh potato production is in the Columbia River Basin, which stretches approximately 170 miles from north to south in the eastern portion of Washington State. Within this region, the vast majority of Class I Rail service is provided by Burlington Northern Santa Fe Railway ("Burlington Northern" or "BN"), with only a small percentage of track owned by Union Pacific Railroad ("Union Pacific" or "UP") servicing the southern portion of this area.

With that said, Burlington Northern and Union Pacific each have complete control from pricing to service with regard to the movement of our potatoes on their own tracks. Please keep in mind that, as a result of the Board's "bottleneck rate" rulings (which occurred after the exemption for potatoes was adopted, 367 I.C.C. 298, 302-03 (1983); see 1 I.C.C.2d 895 (1986, stating that potatoes were exempted in that 1983 decision) and the existing "paper barriers" (most of which came into existence after that exemption for potatoes was adopted), a railroad does not have to (or may not even be able to) give a rate quote for delivery of product to a competitor's line. So unless a Washington potato shipper's facility has access to both Burlington Northern and Union Pacific, and both have available capacity (which I discuss at greater length below), the rail shipper can only utilize one of these two Railroads.

The potato industry is constrained in choice of transportation modes by weight; accordingly, to move potatoes to market, we need competitive rail service. I describe below a real-life scenario from one of our captive rail shippers and the cost associated with moving fresh potatoes to market. The examples given reflect the cost of shipping our product from the Columbia River Basin to the Chicago market. These quotes are estimates given to me at the time of this letter. (The shipper has to remain anonymous due to concerns about adverse action that could be taken by the railroad to which the shipper is captive.)

In this scenario Shipper X has an order for delivery of fresh potatoes to the Chicago market. The standard shipping unit in our industry is a 50-pound carton. The order received is for 2,400 units (120,000 pounds) of fresh potatoes, which can be transported in one 50-foot refrigerated boxcar. Shipper X scans all available transportation options.

1) Burlington Northern: Shipper X has a BN rail siding but has been informed by the local BN sales representative that it has only have 72-foot refrigerated boxcars or supercars available and could provide two supercars a week if needed. They are told that BN is in the process of phasing out all 50-foot refrigerated boxcars so availability is limited or nonexistent. Besides height and weight restrictions on some of BN's tracks in other parts of the United States, the supercar holds 3,300 units and the shipper has to call the buyer and ask if they can receive an additional 900 units or 45,000 pounds of fresh potatoes. If not, the cost per unit of service would increase if it were only to be loaded with 2,400 units. The buyer would rather not receive this additional product because of warehouse constraints, but agrees to the additional order. The cost per unit of using this car is $3.13 (which totals $10,329). The estimated time of arrival of the product is 10 days.

2) Rail Logistics: Shipper X has a BN siding and can use a third-party logistics company to handle this order. There are currently a total of 30 refurbished 50-foot refrigerated boxcars available to the Washington State produce industry, including all frozen processed food manufacturers. Because of the limited supply of these boxcars, these units are in high demand. If available this boxcar fits the order of 2,400 units and the cost per unit of using this service is $3.75 (which totals $9,000). The estimated time of arrival of the product is 10 days.

3) Union Pacific: Shipper X has a BN siding and cannot receive a price quote for delivery via UP. Shipper X has a neighbor/competitor that does have a Union Pacific siding on its property and can deliver fresh potatoes to the Chicago market. Not including freight and handling charges between facilities, Shipper Y can acquire a 50-foot refrigerated boxcar for a per unit cost of $3.11 (which totals $7,464). The estimated time of arrival of product is 12 days.

4) Cold Train: Shipper X can utilize a third-party service provided by Rail Logistics, which is an intermodal service providing 40-foot refrigerated containers door-to-door to the Chicago market from the Columbia River Basin. The intermodal service uses BN track and each container holds 850 units, so Shipper X would need three 40-foot refrigerated containers to move 2,550 units to the buyer. This service is also open to all Washington State produce shippers and frozen processed food manufactures and is in high demand. The buyer agrees to receive the additional 150 units or 7,500 lbs. (If Shipper X were not to use the available capacity, the per-unit transportation cost would increase.) The cost

per unit for this service is $4.18 (which totals $10,659). The estimated time of arrival of the product is 5 days.

5) Open-Market Trucking: The last option for Shipper X is to receive an open-market quote for truck delivery. Because of interstate weight limitations, only 850 units can be loaded on a 53-foot truck. So Shipper X needs three 53-foot trucks to deliver product to market, which equals 2,550 units. The buyer is willing to receive 150 more units than anticipated. The door-to-door service is $5.50 per unit (which totals $14,025). The delivery time is 3 days.

From our perspective, the members of our industry are the quintessential captive rail shippers. In the-above described scenario, I did not discuss with the shipper its final transportation choice, but clearly the rail mode is more economical if it is available. And these numbers reflect a general price quote for each of these respective services and can vary depending on the relationship that each individual fresh potato shipper has with their transportation provider.

We have found in our industry that when truck transportation is available for less than the cost of rail service, members of the industry will use truck service. But in a weight-constrained industry such as ours, rail transportation is the most efficient means to move potatoes to market in nearly all instances.

Below is a set of statistics that demonstrates just how much of our product moves via the two Class I Railroads. From July of 2009 to July of 2010, despite everything I have said above, only 7 percent of our commodity moved on the rail system. (Note that "piggyback" service refers to trucks moved via rail flatcar, so I include that in my calculation of the percentage moved via rail.)

Sum of 10000lb units	Column Labels														
Row Labels	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Grand Total
⊟WASHINGTON	1602	11200	11699	9842	8158	7461	6229	5830	6068	5574	5174	3774	2921	207	98	85837
⊟COLUMBIA BASIN	1602	11109	10193	7383	5631	5260	4323	4340	4645	5165	4693	3742	2921	207	98	71312
Piggyback		63	95	45	23	9		81	54	32	68	41	27	32	5	575
Rail		398	602	879	550	475	382	373	288	237	254	169	169		93	4869
Truck	1602	10648	9496	6459	5058	4776	3941	3886	4303	4896	4371	3532	2725	175		65868
⊟NORTHWESTERN WASHINGTON		91	1506	2459	2527	2201	1906	1490	1423	409	481	32				14525
Piggyback			54	45	77	108	54	59	54	23						474
Truck		91	1452	2414	2450	2093	1852	1431	1369	386	481	32				14051
Grand Total	1602	11200	11699	9842	8158	7461	6229	5830	6068	5574	5174	3774	2921	207	98	85837

Source: USDA Market News

This makes one ask why so few movements were by rail, given the inherent economic advantage of the rail mode. The above scenario demonstrates that truck rates are higher than rail rates, but the issue was that the Burlington Northern railroad had little to no capacity to transport a seasonal perishable commodity such as ours. And with the current "paper barriers" in place, the members of our industry have very little access to Union Pacific, which had capacity. Because of this market manipulation, produce buyers typically ship potatoes via truck rather than via boxcar, despite the seeming price advantage of the rail mode. And with the lack of service and unfair pricing schemes created by a monopolistic rail industry over the past three decades, there is no incentive on the part of the Class I railroads to change their current practices. As captive shippers, our industry members would prefer to use the rail mode, given its inherent economic advantages, but it is too difficult to negotiate terms with the Class I Railroads as the market exists today. Yet, because of the exemption for potatoes, we have no means available for the

Surface Transportation Board to hear our members' grievances, unless the exemption for potatoes is revoked.

The ICC stated in 1983 that there was potential truck competition available to constrain railroad rates, and therefore the exemption for potatoes was appropriate at that time. However, it also stated that, if such competition did not exist, or if the railroads were abusing their market power, the exemption would be revoked. 1 I.C.C.2d 895, citing 367 I.C.C. at 302-03. The evidence I have discussed herein demonstrates that the transportation market for Washington potatoes is vastly different in 2011 than it was in 1983-86, and that the railroads, despite their economic advantage over the truck mode, either do not have the capacity to handle potatoes when they are ready to go to market, or choose not to provide that capacity. Either way, STB regulation is needed to provide potential remedies for the circumstances I have described. Certainly, I have provided enough evidence of changed circumstances that the Board should have no choice but to open a proceeding to consider revoking the class-wide exemption for potatoes.

Therefore, we respectfully request that the Surface Transportation Board revoke the class-wide exemption for potatoes, because until this exemption is revoked, there will be no incentive for the railroads to offer fair and equitable rates and service to our members. Thank you for considering this recommendation and these Comments.

Respectfully submitted,

Matt Harris
Director of Trade
Washington State Potato Commission